No. 95-85 (2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

REEBOK INTERNATIONAL LTD. and
REEBOK INTERNATIONAL LIMITED,

Petitioners,

v.

BANQUE INTERNATIONALE
A LUXEMBOURG S.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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29 pp

QUESTION PRESENTED

Whether the Court of Appeals correctly held that the District Court exceeded its powers when it held a foreign bank, not a party to the United States court proceeding and not otherwise subject to personal jurisdiction in the forum, in contempt for aiding and abetting a violation of an injunction by engaging in conduct solely in its own country which was required by the laws of that country.

LIST OF INTERESTED PARTIES

Respondent, Banque Internationale a Luxembourg S.A. ("BIL"), is a Luxembourg banking corporation, with its principal place of business in Luxembourg. The parent companies and subsidiaries (except wholly owned subsidiaries) of BIL are listed below:

1. *Parent Company*
   Crédit Communal de Belgique, Bruxelles

2. *Subsidiaries*
   Abecor, Bruxelles
   Aerochange Sàrl, Luxembourg
   Aurea Finance Company, Luxembourg
   Ares S.A., Luxembourg
   Banque Bruxelles Lambert, Bruxelles
   Belfox, Bruxelles
   Bil-Vie S.A., Luxembourg
   Bourse de Luxembourg, Luxembourg
   Cedel Bank, Luxembourg
   Cegedel, Luxembourg
   Centrale de Communications Luxembourg, Luxembourg
   Cetrel, Luxembourg
   Euro Pacific Advisors, Hong Kong
   Euro-Trav-Ecu, Bruxelles
   Europay Luxembourg, Luxembourg
   Exor, Luxembourg
   Immo Croissance Conseil, Luxembourg
   Intercalux S.A., Luxembourg
   Luxair Executive S.A., Luxembourg
   Luxair, Luxembourg
   Luxconsult S.A., Luxembourg
   Paneurolife S.A., Luxembourg
   Port Fluvial Mertert, Luxembourg

Serie S.A., Luxembourg
Shipping Transport Insurance Management (STIM), Luxembourg
Soporgest, Luxembourg
Société Immobilière du Parc des Expositions de Luxembourg, Luxembourg
Société Internationale des Foires de Luxembourg, Luxembourg
Société Royal Rome, Luxembourg
Swift, Bruxelles
Visalux S.A., Luxembourg
Luxempart, Luxembourg

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, Banque Internationale a Luxembourg S.A. ("BIL" or the "Banque"), respectfully requests that this Court deny the Petition for a Writ of Certiorari submitted by Petitioners Reebok International Ltd. and Reebok International Limited (collectively "Petitioner" or "Reebok"). As discussed in the Argument section below, the decision of the United States Court of Appeals for the Ninth

Circuit from which review is sought presents no conflict with decisions of any other United States Court of Appeals or of this Court. Moreover, the Ninth Circuit's holding that it would be fundamentally unfair to subject BIL to personal jurisdiction in the California forum was the result of a careful analysis limited to the unique facts presented in this case. Accordingly, the Petition raises no issues worthy of this Court's review.

OPINIONS BELOW

The opinion of the Ninth Circuit unanimously reversing the contempt finding against BIL by the United States District Court for the Southern District of California is reported at 49 F.3d 1387 (9th Cir. 1995) and is reproduced in Petitioner's Appendix ("App.") at 42a-62a. The Order of the Ninth Circuit unanimously denying Reebok's petition for rehearing and its suggestion for rehearing en banc is not reported, but is reproduced in Petitioner's Appendix at 63a.

The opinion of the District Court dismissing Reebok's contempt motion against BIL is not reported, but is reproduced in Petitioner's Appendix at 1a-17a. The opinion of the District Court granting Reebok's motion for contempt against BIL upon reconsideration is reported at 827 F. Supp. 622 (S.D. Cal. 1993) and is reproduced in Petitioner's Appendix at 18a-33a. The opinion of the District Court fixing sanctions against BIL in the total amount of $2,680,417.30 is not reported, but is reproduced in Petitioner's Appendix at 34a-41a.

STATEMENT OF JURISDICTION

The opinion and judgment of the Ninth Circuit dismissing the contempt claim against BIL were entered on

March 6, 1995. App. at 42a. The order denying Reebok's Petition for Rehearing and rejecting the suggestion for rehearing en banc was entered on April 19, 1995. App. at 63a. Reebok invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

The jurisdiction of the Ninth Circuit was invoked pursuant to 28 U.S.C. § 1291 as an appeal of right from the final order of the District Court imposing contempt sanctions against BIL. The jurisdiction of the District Court was based upon 28 U.S.C. §§ 1331 and 1338(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves, *inter alia*, the question of whether the District Court's exercise of personal jurisdiction over BIL met the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

This case also involves the permissible reach of a District Court's injunctive powers pursuant to Fed. R. Civ. P. 65(d), which provides as follows:

> Every order granting an injunction and every restraining order shall set forth the

> reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

STATEMENT OF THE CASE

A. Factual Background

On or about November 29, 1989 BIL, a Luxembourg bank having no presence in the State of California and doing no banking business anywhere in the United States, received a copy of a temporary restraining order issued by the United States District Court for the Southern District of California (the "Restraining Order") enjoining defendant Byron McLaughlin ("McLaughlin") and several companies controlled by him from transferring or disposing of certain assets, including bank deposits.[1] App. at 47a. At the time that BIL received a copy of the Restraining Order, one of McLaughlin's companies, Heatherdale Corporation ("Heatherdale"), had approximately $2.4 million on deposit with BIL in Luxembourg. App. at 48a.

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[1] The Petitioner incorrectly states that BIL "provided banking services to McLaughlin in California." Petition at 4 n.3. In fact, the record is clear that BIL did not do business in California. It merely accepted funds from McLaughlin in Luxembourg and sent a few letters to McLaughlin at his address in California acknowledging receipt of those funds. App. at 47a, 53a.

On December 6, 1989 McLaughlin's wife, Brigitte McLaughlin, appeared at BIL's office in Luxembourg at McLaughlin's request and presented all documents required by Luxembourg law to take control of the funds in the Heatherdale account. While those funds were in a time deposit that did not mature until January 8, 1990, BIL would normally have honored the McLaughlins' demand for early release. App. at 47a-48a.

But BIL did not regard this as the normal situation. Even though it knew the Restraining Order had no force in Luxembourg because it had not been recognized by a Luxembourg court, BIL wanted to protect the interests implicated by the Order. However, Luxembourg law provided significant constraints on what BIL could do. App. at 48a; Ex.R. at 27-29.[2]

BIL was prohibited under Luxembourg banking secrecy laws from informing Reebok, the United States District Court or any other person of the McLaughlins' demand to withdraw the funds. It also could not simply ignore the demand because of the strict obligations a bank has to honor proper customer demands under Luxembourg law. Accordingly, in an effort to keep the funds at the Banque, BIL did the one thing it was technically entitled to do: it told Ms. McLaughlin that it would retain the funds until the time deposit matured. App. at 48a; Ex.R. at 25-29.

Ms. McLaughlin, through Luxembourg counsel, promptly challenged BIL's right to withhold the funds, stating that if BIL were basing its decision on the Restraining Order, it was knowingly acting contrary to Luxembourg law. The

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[2] "Ex.R." refers to the Excerpts of Record filed by BIL in the Court of Appeals on November 6, 1993.

head of BIL's Legal Department, Mr. Jean-Jacques Rommes, advised BIL that the McLaughlins' counsel was correct. While Luxembourg has well-recognized procedures under which a foreign court order can be formally recognized as a Luxembourg court order (the exequatur procedure), or provide the basis for a Luxembourg order of attachment (the saisie-arret procedure), such a decree had not been obtained with respect to the Restraining Order. As a result, that Order had no legal force and effect under Luxembourg law. App. at 48a-49a.

Thus, BIL could have paid out the funds immediately. But, in an effort to protect all interests, BIL used the limited leverage of the time deposit to negotiate a compromise whereby BIL agreed to move funds out of the Heatherdale account in return for the McLaughlins' agreement to keep the principal portion of the funds in another McLaughlin-controlled account at BIL pending further legal developments. Pursuant to this compromise, BIL complied with the McLaughlins' demands to transfer the funds into Ms. McLaughlin's account, to form the Bawnmore corporation, and then to transfer the funds into the Bawnmore account. At all times, therefore, the principal balance of the funds remained at BIL in accounts controlled by McLaughlin, and only $117,000, consisting primarily of accrued interest, was released. App. at 48a.

By this compromise, BIL ensured that if Reebok took the steps required to give the Restraining Order legal force and effect under Luxembourg law, the funds would still be at the Banque and available to Reebok. As Ms. McLaughlin acknowledged, BIL also advised the McLaughlins that it would *not* protect or "cover" for them if a Luxembourg court issued an order regarding the funds. Ex.R. at 134.

While BIL thus retained the McLaughlin funds, Reebok never took the proper steps to obtain a court order in Luxembourg to freeze or obtain them. App. at 48a. Significantly, Reebok never pursued the exequatur procedure under which the Restraining Order could have been given formal legal recognition as a Luxembourg court order. App. at 48a; Ex.R. at 104-05.

Moreover, when Reebok sought a unilateral order of attachment through the saisie-arret procedure, it inexplicably failed to make the necessary evidentiary showing to permit such relief, prompting its own Luxembourg counsel to complain that Reebok's showing was "too general at this stage." Ex.R. at 94, 152-53. While Reebok could have filed an expedited appeal from the denial of its application, and introduced new evidence on that appeal, Reebok did not do so. Ex.R. at 153-54.

Instead, Reebok brought another proceeding seeking a provisional injunction against BIL. Because this was not the appropriate way to obtain formal recognition of the Restraining Order, or to attach funds based upon that Order, the Luxembourg court dismissed Reebok's application as defective on January 22, 1990. Ex.R. at 35-39; App. at 48a. At that point, all legal efforts by Reebok in Luxembourg came to an end. As a result, the Restraining Order *never* had any legal force and effect in Luxembourg, a fact that even Reebok's own Luxembourg law expert acknowledged. App. at 55a-56a.

Then, after BIL failed to comply with McLaughlin's repeated demands for the funds, on or about March 2, 1990, Heatherdale sued BIL in the Luxembourg District Court, seeking an order compelling BIL to honor all transfer and withdrawal demands. Heatherdale argued that since the Restraining Order had not been recognized by a Luxembourg

court, BIL had no legal basis to refuse its customer's demands. BIL argued in opposition that it was in a difficult position because it was aware of the Restraining Order, but was also aware that such Order was not enforceable in Luxembourg.[3] App. at 49a; Ex.R. at 31.

On April 24, 1990 the Luxembourg court issued an order in favor of Heatherdale (the "*Heatherdale* Order"), holding that the Restraining Order had no force in Luxembourg and that BIL was absolutely required to honor its customer's demands. The *Heatherdale* Order provides in relevant part:

> B.I.L. has been served a temporary restraining order issued by a California court on November 27, 1989 prohibiting all banks and generally any other financial institutions from releasing the funds held by HEATHERDALE CORPORATION.
>
> . . . .
>
> Since the measures taken abroad against HEATHERDALE CORPORATION have only a territorial effect and since the opposition served on B.I.L. was not done in the form of a proper attachment, supported by a title enforceable in Luxembourg or the permission of a Luxembourg judge, they cannot be considered valid or effective. . . .

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[3] While BIL could make limited disclosures to the *Heatherdale* court necessary to defend itself, the Luxembourg bank secrecy laws were not waived, and contrary to Reebok's suggestion (Petition at 6) BIL was still prohibited from disclosing anything about the *Heatherdale* action to Reebok or the District Court. Ex.R. at 147, 156-57.

> Therefore, B.I.L.'s blockage of the account must be considered improper. . . .

App. at 58a-59a.

Shortly after the *Heatherdale* Order issued, BIL honored McLaughlin's demands and released approximately $2.5 million. App. at 49a.

B. The Proceedings Below

On January 22, 1992 Reebok brought a contempt motion against BIL in the District Court, arguing that when BIL released the funds with knowledge of the Restraining Order, it became an aider and abettor of McLaughlin's contempt pursuant to Fed. R. Civ. P. 65(d) and, as a consequence, was automatically subject to personal jurisdiction in the California forum. On May 28, 1992 the District Court, without reaching the jurisdictional issue, dismissed the contempt motion because (1) BIL was compelled by Luxembourg law — specifically the *Heatherdale* Order — to release the funds, and (2) BIL did not commit the requisite voluntary act or have the requisite intent for aider and abettor liability under Rule 65(d). App. at 9a-14a, 49a.

On July 2, 1992 Reebok moved for reconsideration, and was thereafter permitted to take discovery from BIL. On April 27, 1993 the District Court granted Reebok's motion for reconsideration and summarily held BIL in contempt. App. at 18a-33a, 49a. By Order dated June 14, 1993 the District Court assessed sanctions against BIL in the amount of $2,680,417.30. App. at 34a-41a, 49a.

The District Court's contempt finding on reconsideration was based upon the erroneous conclusion that BIL had failed

to inform the *Heatherdale* court in Luxembourg of the existence of the Restraining Order and that court, therefore, directed BIL to release the funds without knowledge of the Restraining Order. App. at 31a, 38a, 58a-59a. In reliance upon this fundamental misapprehension of fact, the District Court concluded that the compulsory effect of the *Heatherdale* Order should now be disregarded and, once disregarded, BIL should be deemed to have assisted McLaughlin in the violation of the Restraining Order. *Id.*

The District Court also held that BIL was subject to personal jurisdiction in California despite an express finding that BIL did not do business in California or anywhere in the United States. Relying upon *Waffenschmidt v. MacKay*, 763 F.2d 711 (5th Cir. 1985), *cert. denied*, 474 U.S. 1056 (1986), the court found jurisdiction on the theory that BIL's supposed act of assisting McLaughlin in the violation of the Restraining Order constituted a "super-contact" with the California forum so that there were sufficient minimum contacts to satisfy the requirement of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). App. at 21a-22a, 53a-54a.

On March 6, 1995 the Court of Appeals unanimously reversed the District Court and dismissed the contempt charge against BIL. The Court of Appeals held that it would be fundamentally unfair and constitute a deprivation of due process to subject BIL to personal jurisdiction in California for having engaged in conduct in Luxembourg that was required by Luxembourg law. App. at 55a-56a, 59a-62a.

As an integral part of its fairness analysis, the Court of Appeals also concluded that the District Court's central factual finding — that the *Heatherdale* court did not know about the District Court's Restraining Order — was clearly erroneous, stating "[t]he Heatherdale Order was issued with

full knowledge of both the TRO and its ineffectiveness under Luxembourg law." App. at 59a. As a consequence, the Court of Appeals determined that the *Heatherdale* court's finding that the Restraining Order had no legal force in Luxembourg "excused BIL from having to comply with it." *Id.*

ARGUMENT – REASONS FOR DENYING THE WRIT

The only "Question Presented" by Reebok in its Petition is

> Whether a federal district court's inherent powers to enforce its injunctions reaches extraterritorially to prevent non-parties from committing acts outside the United States which aid and abet a party in violating the injunction.

Petition at i.

This, however, was not the question decided by the Court of Appeals in the present case. The question decided by the Court of Appeals was whether BIL, a nonparty Luxembourg bank *not otherwise subject to jurisdiction* in California, could be held in contempt for engaging in conduct in Luxembourg that was *required by Luxembourg law.* After careful analysis of the factual record, the Court of Appeals answered this question in the negative.

By challenging the Court of Appeals' decision in its Petition, Reebok is asking this Court to proclaim a new rule of law that United States court injunctions are binding upon every person in the world who has notice of them, irrespective of whether that person has any contacts with the United States forum and irrespective of whether that person has conflicting

obligations imposed by its own domestic law. There is no good reason for this Court to accept the Petitioner's invitation to create such an expansive rule and every good reason not to do so.

I.

NONE OF THE THREE REASONS ADVANCED BY THE PETITIONER SUPPORTS REVIEW OF THE DECISION BELOW.

A. The Ninth Circuit's Decision Does Not Conflict With Decisions of the Fifth Circuit or This Court.

The Petitioner argues that the Ninth Circuit's decision conflicts with the decision of the Fifth Circuit in *Waffenschmidt v. MacKay*, 763 F.2d 711 (5th Cir. 1985), *cert. denied*, 474 U.S. 1056 (1986) and with certain decisions of this Court. The Petitioner could not be more mistaken.

In *Waffenschmidt*, the Fifth Circuit affirmed an order holding that certain nonparty Texas residents were subject to personal jurisdiction in a contempt proceeding in Mississippi because they aided and abetted the Mississippi defendant's violation of an injunction by accepting assets from the defendant which they knew were subject to the injunction. The Fifth Circuit concluded that jurisdiction over the nonparties was proper because of the inherent authority of a court to enforce its injunctions and because a knowing violation of an injunction would make litigation in the forum that issued it reasonably foreseeable. *Id.* at 716-18, 721-23. The court grounded its decision on the fact that the "mandate of an injunction issued by a federal district court runs nationwide", *Id.* at 716, and, therefore, the "nationwide scope of an injunction carries with it the concomitant power of the court to reach out to nonparties who knowingly violate its orders." *Id.* at 717.

The Ninth Circuit readily concluded that the *Waffenschmidt* rationale had no application to the facts of this case:

> [I]t is not surprising that [the *Waffenschmidt* court] determined that a national court which could issue nationwide orders could also reach out and enforce those orders on a nationwide basis by taking personal jurisdiction over violators. Of course, in *Waffenschmidt* the individuals held in contempt had accepted assets from the enjoined party after they knew that he was enjoined from transferring those assets. *Id.* at 723.
>
> A finding of personal jurisdiction over the violators in that instance may be sound, even necessary. But the strength of the analysis begins to crumble when a district court seeks to reach out across the Atlantic in an attempt to impose conflicting duties on another country's nationals within its own borders.

App. at 54a-55a.

Unlike the nonparties in *Waffenschmidt*: (i) BIL was a foreign national, acting on foreign soil; (ii) BIL was acting in a jurisdiction (Luxembourg) where the Restraining Order had no legal force and effect; (iii) BIL was compelled by the law of Luxembourg to engage in conduct that was prohibited by the terms of the Restraining Order; (iv) BIL was prevented under Luxembourg bank secrecy laws from seeking clarification from the District Court as to the intended reach

of the Restraining Order; and (v) BIL did not assist in removing the restrained funds from the forum since the funds had been deposited with BIL in Luxembourg long before the Restraining Order issued. App. at 47a-49a, 55a.

The Court of Appeals correctly held that any effort to export the *Waffenschmidt* test to the international arena on the particular facts of this case would violate fundamental principles of due process. App. at 55a, 59-61a, *citing Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482 (9th Cir. 1993). In short, the Ninth Circuit's decision is not even remotely in conflict with the Fifth Circuit's decision in *Waffenschmidt*.[4]

The Ninth Circuit's decision also is not in conflict with any decisions of this Court. The decisions in *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952) and *United States v. First National City Bank*, 379 U.S. 378 (1965), upon which the Petitioner relies (Petition at 11), merely stand for the proposition that a district court has the authority to enjoin conduct and freeze assets of a *party* outside the United States so long as personal jurisdiction has *already* been obtained over that party. *See Steele*, 344 U.S. at 281, 289; *First National City Bank*, 379 U.S. at 384.

Of course, BIL was not a party to the District Court proceeding and, as the Ninth Circuit found, the District Court

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[4] Petitioner suggests that the *Waffenschmidt* court's citation to *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 452 (1932) confirms that the *Waffenschmidt* test for jurisdiction over nonparties was not intended to be limited to the United States. Petition at 10-11. Incredibly, Petitioner fails to inform the Court that the respondent in *Leman* was a U.S. resident party, not a foreign nonparty, and that only three sentences above the portion of the *Leman* decision quoted by Petitioner, the Court stated that "[t]he decree was binding upon the respondent, not simply within the District of Massachusetts, but throughout the United States." *Id.* at 451.

did not — indeed, could not — have jurisdiction over BIL at the time that it issued the Restraining Order. App. at 53a-56a.

Moreover, in both *Steele* and *First National City Bank*, this Court expressly found that the enforcement of the district court's injunctions against extraterritorial conduct of the parties in those cases would *not* present any conflict with foreign law. *See Steele*, 344 U.S. at 289; *First National City Bank*, 379 U.S. at 384. By contrast, the Ninth Circuit expressly found that the prohibitions in the Restraining Order presented a direct conflict with the obligations imposed upon BIL under Luxembourg law. App. at 55a-56a, 61a. In short, the decisions of this Court relied upon by Reebok present no conflict whatsoever with the Ninth Circuit's decision.

Finally, Petitioner argues that the Court of Appeals created a "*per se* rule that a court's injunctive powers as to non-party aiders and abettors terminate at the borders of the United States" and that this rule "does not foster international comity." Petition at 11. This argument turns the principle of comity on its head; it also completely mischaracterizes the Court of Appeals' decision.

Even if the Court of Appeals had created the *per se* rule that Petitioner contends, such rule would still be far more consistent with comity principles than the rule advocated by Petitioner, which would allow United States courts simply to disregard the compulsory effect of foreign law on foreign nationals acting on foreign soil. Notably, the Court of Appeals expressly found that the District Court's order holding BIL in contempt for obeying the law of Luxembourg — the order that Reebok seeks to have reinstated — created a "conflict with the sovereignty of Luxembourg [that] could hardly be more sharp." App. at 61a.

In any event, contrary to Reebok's contention, the Court of Appeals did not create such a *per se* rule. In its opinion, the Ninth Circuit carefully evaluated the specific factual record before it which established that BIL did not do business in the State of California and did not otherwise have any minimum contacts with that State. The record also established that the Restraining Order had no legal force and effect in Luxembourg and that BIL was compelled by Luxembourg law, including the *Heatherdale* Order, to release the funds to McLaughlin. Far from creating any *per se* rule, the Ninth Circuit followed established precedent and held only that BIL could not be subject to personal jurisdiction in California based upon these specific facts. App. at 59a-61a.

B. The Court of Appeals' Decision Does Not Create Confusion and Uncertainty.

Unable to demonstrate that the Ninth Circuit's decision conflicts with any decisions of this Court or other Courts of Appeal, the Petitioner next argues that the Ninth Circuit confused the law by applying principles relating to the recognition of final judgments to provisional injunctions. Petition at 13-15. Thus, Reebok states that (1) the Ninth Circuit held that if an injunction is to have any effect beyond the United States as to a nonparty, it must be "registered" — that is, given formal legal recognition — in the country of the nonparty, and (2) an injunction is not "registerable" under Luxembourg law because it is not a final judgment. *Id.*

Reebok's first statement mischaracterizes the Ninth Circuit's decision. Its second statement mischaracterizes Luxembourg law.

The Ninth Circuit did not hold that an injunction must always be "registered" in a foreign country to have effect over

a nonparty there. As stated above, the Ninth Circuit merely held that it would be unfair to hold BIL subject to personal jurisdiction in California on the specific and unique facts of this case.

Moreover, the record below established that in this case the Restraining Order could have been given full legal effect in Luxembourg through the saisie-arret procedure. That procedure provided Reebok with an available and perfectly suitable mechanism to obtain a Luxembourg court order of attachment based upon the Restraining Order, thereby ensuring the continued restraint of the funds at BIL. Reebok never properly pursued this remedy. Ex.R. at 151-54.

The record below also established that the Restraining Order could have been given formal legal recognition as a Luxembourg court order through the exequatur procedure even though it was not a final judgment. Indeed, Mr. Jacques Loesch, BIL's Luxembourg law expert, testified that if Reebok had sought exequatur for the Restraining Order, it would have had a very good prospect of being granted. Ex.R. at 72, 146-47, 154. Inexplicably, Reebok never even pursued this remedy.[5]

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[5] Petitioner claims that Lorang, *Luxembourg* at 3-25, in INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS (D. Campbell ed. 1993) (the "Lorang Article") and Reebok's reconsideration motion in the District Court (C.R. 199) both stand for the propositions that exequatur requires a full civil trial on the merits and that only final judgments can receive the exequatur of a Luxembourg court. Petition at 5 n.5, 15 n.19. Petitioner is simply wrong. Neither of these citations, nor anything else in the record, stands for such propositions. In fact, the Lorang Article confirms that a Luxembourg court (i) may *not* evaluate the merits of foreign orders submitted to it for exequatur, and (ii) may give formal legal recognition to foreign provisional orders. Lorang Article at 3-7, 12, 16.

Thus, the Petitioner's criticism of the Ninth Circuit's decision has nothing to do with any perceived lack of available remedies in Luxembourg to give legal force to the Restraining Order. Rather, having failed properly to pursue those remedies, the Petitioner criticizes the Ninth Circuit for refusing to create a broad new rule of law holding that United States injunctions are binding upon nonparties wherever located in the world, irrespective of the absence of any contacts with the United States forum and irrespective of the existence of conflicting mandates under foreign law.

As the Ninth Circuit aptly stated, the power of a United States court simply does not extend that far:

> In fine, we do not agree that when a national of a foreign country follows the law of that country in that country it can be dragged halfway around the world to answer contempt charges arising out of a foreign court's ineffective order.
>
> . . . .
>
> . . . [T]here are limits to the district court's reach, and those limits became palpable when the court sought to extend its arm into the territory of another nation and to impose discordant duties upon the subjects of that nation whose actions were solely within its own borders.

App. at 59a-62a.

C. The Petitioner's "Parade of Horrors" Argument Is Without Merit.

The Petitioner also argues that in order to prevent a proliferation of money laundering by counterfeiters using foreign banks, this Court must now jettison well-settled principles of due process and comity and decree that United States injunctions bind the world. *See* Petition at 16-18. This argument requires little discussion.

The Petitioner has not shown — nor could it — that adherence to the due process and comity principles upon which the Court of Appeals' decision is founded will have a disastrous impact on criminal enforcement of United States counterfeiting laws. In fact, it is notable that Petitioner has never cited a single other case in which a party defendant such as McLaughlin has violated a United States injunction by withdrawing restrained funds from a foreign bank.

This is not surprising since other countries, like Luxembourg, typically have available procedures to give legal effect to a United States court order and to ensure the continued restraint of illegally laundered funds. Having failed properly to pursue the remedies available to it in Luxembourg, Petitioner's "parade of horrors" argument rings hollow.

In sum, the Petitioner has presented no reasons, much less the requisite "special and important reasons", Sup. Ct. R. 10.1, for this Court to review the decision of the Court of Appeals.

II.

THERE ARE ADDITIONAL REASONS FOR DENYING THE WRIT.

In addition to the Court of Appeals' dismissal on personal jurisdiction grounds, that Court's opinion provides several alternative bases which support dismissal of the contempt charge against BIL. For these reasons as well, review by this Court is unnecessary and unwarranted.

First, as the Court of Appeals made clear, the Restraining Order should never have been construed to require BIL to do anything in Luxembourg because that Order was never given legal force and effect in that country. App. at 55a, 59a-60a. Thus, as a matter of United States law, the Restraining Order could properly have been treated as a legal nullity by BIL, insufficient to require BIL to take, or refrain from taking, any action. *Id. Accord* Restatement (Third) of the Foreign Relations Law of the United States § 441 comment e (1987).

Second, even assuming the Restraining Order could be deemed to have had some legal force in Luxembourg, then the District Court should never have construed it to require BIL to perform acts in Luxembourg that would violate Luxembourg law. As the Ninth Circuit stated, "[i]t is a general principle that one state cannot require a person 'to do an act in another state that is prohibited by the law of that state or by the law of the state of which he is a national,' nor can the person be required to refrain from an act that is required," *citing* Restatement (Third) of the Foreign Relations Law of the United States § 441(1)(a) (1987). App. at 55a. *Accord United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962). The Ninth Circuit correctly concluded that when the District Court held BIL in contempt for complying with Luxembourg law, it exceeded its power. App. at 59a.

Finally, the Ninth Circuit also correctly concluded that it would "defy logic" to hold BIL in contempt of the Restraining Order for complying with the *Heatherdale* Order. App. at 56a-57a. An essential element of Reebok's contempt claim against BIL under Fed. R. Civ. P. 65(d) was proof that BIL acted voluntarily when it transferred the funds. App. at 12a-14a. Because the compulsory effect of Luxembourg law removed any voluntariness with respect to BIL's transfers, Reebok could never satisfy the requisite elements of its contempt claim against BIL.

Accordingly, even if this Court were to disagree with the jurisdictional holding of the Ninth Circuit that Petitioner challenges, review of this case would still be unwarranted since the Ninth Circuit's opinion presents numerous alternative bases supporting dismissal of the contempt claim against BIL.

CONCLUSION

For all of the foregoing reasons, respondent Banque Internationale a Luxembourg S.A. respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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